



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,498	04/04/2001	Loralei Marie Brandt	J6497(C)	3031

201 7590 09/24/2003

UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
EDGEWATER, NJ 07020

EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
----------	--------------

1617

DATE MAILED: 09/24/2003

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/826,498

Applicant(s)

BRANDT ET AL.

Examiner

Gina C. Yu

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 26, 2003 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 26 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Karlen et al. (US 6190647 B1).

Karlen discloses that the terpolymer of vinyl pyrrolidone, dimethylaminoethyl methacrylate and vinyl caprolactam is marketed by ISP Co., under the trademark of Gaffix VC713. See col. 3, lines 56 – 59. See Example III.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 19- 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peffly (US 5985294), or alternatively, in view of Karlen.

Peffly teaches hair styling gel composition comprising 3 % by weight of PVP/VA copolymer (50 % active) and 1 % by weight of hydroxyethyl cellulose, the ratio of the copolymer to hydroxyethyl cellulose meeting the limitations of claim 19 (c). See Example III. The reference also teaches that the total amount of hair styling polymer is preferably from about 0.5-10 % by weight. See col. 3, lines 33 – 44.

The reference fails to explicitly disclose the weight amount and ratio of the PVP/VA polymers and hydroxyethyl cellulose as recited in the instant claims.

Generally, differences in concentration will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical. See MPEP § 2144.05. Since the ranges of the total amount of the hair holding polymers and the weight ratio thereof are disclosed in Peffly, examiner views that one having ordinary skill in the art would have discovered the optimum or workable ranges by routine experimentation. It would have been obvious to a routineer to user lesser amount of the active film forming polymers because of an expectation of successfully producing a hair styling gel composition with a desired degree of hair holding properties or stiffness.

Karlen teaches hair styling compositions. The reference teaches a gel composition with strong fixing action, comprising 0.1 % by weight of Gafquat 755N (the terpolymer of vinyl pyrrolidone, dimethylaminoethyl methacrylate and vinyl caprolactam) in water. See Example 4. The reference teaches that cellulose derivatives such as hydroxypropyl cellulose also is a suitable film-forming polymers with hair-fixing action. See col. 3, lines 23 – 38. The reference further teaches that polysaccharides or mixtures of oligo-mono-and disaccharides can be used.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the composition of Peffly by lowering the amount of the hair holding polymers as motivated by Karlen because of an expectation of successfully producing strong hair fixing gel with while minimizing the amount of the ingredients.

2. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peffly (US 5985294) and Karlen as applied to claims 19-25, and further in view of Mizutani et al. (US 4411891) ("Mizutani").

While Peffly, discussed above, generally teaches using cellulose derivatives in hair styling compositions, the reference fails to teach dextran.

Mizutani teaches that cationized dextran derivatives and their salts provide "excellent affinity" to hair, suppleness, moisture-retaining property and feel of a film. See col. 1, line 6 – col. 2, line 50. See col. 7, line 59 - col. 8, line 3 for the amount and use of the dextran for cosmetic compositions. The reference provides the application of

Art Unit: 1617

the invention in hair treatment composition formulations. Formulation Example 15 teaches a hairdressing lotion which is said to have good combability and gloss.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the composition of Peffly by adding dextran as motivated by Mizutani because of an expectation of successfully producing a hair styling composition with suppleness, moisture-retaining property, and gloss.

Response to Arguments

Applicant's arguments with respect to claims 19-27 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

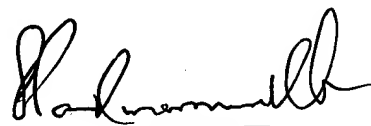
No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu
Patent Examiner


SREENI PADMANABHAN
PRIMARY EXAMINER 9/22/03